

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7736 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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GSRTC

Versus

VITTALBHAI R SOLANKI

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Appearance:

MR HARDIK C RAWAL for Petitioner

MR AK CLERK for Respondent Shri Vittalbhai R.Solanki.

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CORAM MR.JUSTICE M.R.CALLA

Date of decision: 22/02/96

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ORAL JUDGEMENT

This Special Civil Application has been filed by Gujarat State Road Transport Corporation ('corporation' for short) against the award dated 29.3.1988 passed by the Industrial Tribunal, Ahmedabad in Reference (IT)No. 408 of 1985. It may also be mentioned that this award dated 29.3.1988 was also made a subject matter of review at the instance of the respondent and while accepting the review on 1.2.1991 in Miscellaneous Application No.23 of 1988 by the Industrial Tribunal, Ahmedabad, it was clarified that the

punishment will be stoppage of one increment permanently instead of putting the respondent workman at the minimum of the basic pay and in the concerned payscale. The review had to be filed by the respondent workman because it was erroneously mentioned in the award dated 29.3.1988 in its operative part that instead of withholding two increments punishment is reduced to withholding of one increment whereas the punishment as has been imposed in the appeal by the corporation was to put the respondent workman at the minimum of the basic pay in the concerned payscale.

The respondent was working as conductor with the petitioner corporation at Gandhinagar depot. He was subjected to departmental inquiry on the allegation that on 9.5.1978 it was found that the bus conducted by him had passengers more than the capacity of the bus. On this allegation being found to be proved the respondent was dismissed by an order dated 31.7.1978. The respondent preferred an appeal before the Appellate Authority in the corporation contending that the order of dismissal was harsh and that he was not guilty of any of the charges levelled against him. The Appellate Authority after considering the submissions raised in the appeal set aside the dismissal order and the punishment was reduced by reinstating the respondent to the original post without any backwages but with continuity of the service at the minimum of the payscale.

The respondent had already raised an industrial dispute against the dismissal order dated 31.7.1978 and this dispute was decided by the Labour Court, Ahmedabad being Reference (LCA) No.948 of 1978 on 16.2.1982 and it was mentioned in para 9 of the award as under as has been pointed out by Mr.Clerk on the basis of the copy of the award dated 16.2.1982. Para 9 is reproduced hereunder :

"9. The petitioner Corporation submits that this is a fit case for granting interim relief staying the operation of the Award at Annexure A hereto. If this is not done then a person who has been found to be guilty would be deemed to be in continuous service as if he had not been given any punishment. This would result into irreparable loss. The balance of convenience is in favour of the petitioner. It is in the interest of justice to grant the interim relief as prayed for herein".

It was thus noticed that the respondent had already been reinstated in service and therefore no order was called for to reinstate but it was mentioned that the services shall be deemed as continuous and the period of 31.7.1978 to 17.10.1978 shall not be treated as a break and the respondent

shall be at the original pay as ordered by the appellate authority.

Even during the pendency of the second departmental appeal as stated above the respondent workman raised yet another industrial dispute raising grievances even with regard to placing him at the minimum of the payscale by the first appellate authority and it is this second dispute which was decided by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 408 of 1985 on 29.3.1988 wherein it was ordered that the sentence of withholding of two increments is reduced to withholding of one increment and that this order shall take effect from the date of the reference i.e. 23.10.1985 and the difference of this amount shall be paid to the concerned workman within two months from the publication of the award.

This award dated 29.3.1988 passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 408 of 1985 has been challenged by the GSRTC in the present Special Civil Application. Mr.Raval appearing for the corporation has argued that in view of the provision of section 11A of the Industrial Disputes Act, the Labour Court or the Industrial Tribunal could interfere with the question of quantum of punishment only in cases where the punishment was discharge or dismissal and Mr.Raval has vehemently submitted that in case of punishment short of discharge or dismissal the Industrial Tribunal or the Labour Court has no jurisdiction to interfere with the quantum of punishment. He has argued that in the instant case the punishment as was modified by the first appellate authority of the corporation itself was to reduce the pay of the respondent at the minimum and dismissal order dated 31.7.1978 had already been set aside by the corporation's first appellate authority itself. As such the Industrial Tribunal in the facts of this case could not have passed the order of withholding only one increment instead of the order which had been passed by the first appellate authority to reduce the respondent workman at the minimum of the payscale. Mr.Raval further submitted that it was not the first default committed by the respondent during the course of discharge of his duties but there were 38 defaults to the discredit of the respondent prior to the present one and he has gone to the extent of pointing out that apart from these 38 previous defaults as per the service book of the respondent there are fifteen more defaults in the period subsequent to the present default in question and the punishment which has been imposed by the Industrial Tribunal, in the facts and circumstances of the case, cannot be said to be adequate. The impugned award dated 29.3.1988 suffers from an inherent contradiction inasmuch as the Industrial Tribunal itself has recorded in para 11 of this award that the punishment did not appear to be harsh and yet in the operative part it has

proceeded to reduce the punishment so as to withhold only one increment and therefore the award cannot be sustained in the eye of law and the order passed by the Appellate Authority so as to reduce the pay of the petitioner to the minimum of the payscale must be sustained. As against it, it has been argued by Mr.A.K.Clerk appearing for the respondent that section 11-A in terms deals with the cases of discharge or dismissal but that does not mean that the Labour Court or the Industrial Tribunal are deprived of considering the question of quantum of punishment in other cases when the punishment is short of discharge or dismissal. Mr.Clerk has submitted that the Labour Court and the Industrial Tribunal functioning under the Industrial Disputes Act are clothed with inherent power to deal with the question of punishment notwithstanding the case of discharge or dismissal. He has argued that there may be cases in which original punishment order itself may be short of discharge or dismissal and even in such cases when the reference is made and the Labour Court or the Industrial Tribunal is called upon to decide the validity, correctness, legality and propriety of such punishment orders which are short of discharge or dismissal and even in such cases if the Labour Court or the Tribunal comes to the conclusion that the punishment which has been imposed [even if short of discharge or dismissal] is highly excessive and disproportionate or that it is shocking to the conscience of the Labour Court or Tribunal, such Court or Tribunal can always step into the aid of the concerned workman who has been subjected to punishment which is found to be excessive or disproportionate and shocking to the conscience of the Court or Tribunal. The purpose of the amendment in section 11-A was not to take away the inherent powers of the Labour Court or the Industrial Tribunal, rather, it was to advance the object of such power vested in the Labour Court or the Industrial Tribunal. Because ultimately it comes to the question of satisfaction of the concerned Labour Court or the Industrial Tribunal as to whether in the facts and circumstances of any particular case the punishment is adequate or not. Basic idea is that the punishment to which the workman has been subjected must be adequate and it must correspond and should be proportionate to the element of misconduct proved against the workman. Mr.Clerk has placed reliance on 1992(2) GLH. Pg.354 in the case of Gujarat State Road Transport Corporation Vs. P.K.Acharya decided by the Division Bench of this Court as also on 1992(1) GLR Pg. 432 in the case of Municipal Commissioner, Baroda Vs. Sanatkumar D.Brahmbhatt. It has further been argued by Mr.Clerk appearing for the respondent that not only that the Labour Court or the Tribunal has inherent powers to deal with the question of quantum of punishment in cases where the punishment is short of discharge or dismissal, in the instant case there was no misconduct whatsoever on the part of the respondent workman. He has

argued that he has nothing to say about the number of previous defaults which have been pointed out by the learned counsel for the petitioner corporation because there was no prior notice of such defaults being taken into consideration against him so as to punish him in the instant case or to take into consideration such previous defaults for the purpose of imposing punishment in this case but so far as the subject matter of the allegations for which the respondent workman has been punished in the instant case are concerned, according to Mr. Clerk there is no misconduct whatsoever. Mr. Clerk has submitted that on 9.5.1978 the respondent was working as conductor on casual contract memo. When the bus was checked it was shown that there were 53+13 i.e. 66 passengers in all but in fact there were 63 passengers and 20 children which means 10 full tickets and hence  $63+10=73$  passengers and thus there were 7 more passengers. It has been submitted that the bus was going from Gandhinagar to Chacharvadi Via Vasna and while on return journey the passengers more in number than the capacity of the bus were found. It has been submitted that there was a marriage party in this bus conducted by the respondent on casual contract. The bus was on return after the marriage ceremony. While they were returning a car of the very same marriage party in which there were 7 passengers broke down and those 7 passengers who were travelling in the car were taken up in the bus as the request was made to take these passengers in this bus which was on contract for the same marriage party and therefore they were accommodated, and this fact was admitted by the respondent even during the course of inquiry. The question arose as to whether the respondent had recovered fare from these passengers and it is the admitted position that he did not recover the fare. Mr. Clerk has submitted that in doing so the respondent has not committed any misconduct whatsoever. On the contrary, as a part and parcel of the establishment of the corporation he has shown due and proper courtesy to the members of the concerned marriage party. If the State or any agency or an instrumentality of the State enters into commercial activities it is the duty of an employee of the State or its agency or instrumentality to extend such business courtesy which anyone would extend and there is no allegation against the respondent that he has charged any money from any of these 7 passengers of the marriage party and had pocketed the same. Thus according to Mr. Clerk on the admitted and undenied facts there is no misconduct on the part of the respondent workman. It has been further argued that in para 11 the mention made by the Industrial Tribunal upon which the learned counsel for the petitioner corporation has heavily relied i.e. he made a mention to the effect that the punishment awarded does not appear to be harsh is actually based on the misreading of the order passed by the first appellate authority and this mention was made by the Industrial Tribunal under the misconception as

if the order passed by the first appellate authority was to withhold two increments permanently whereas in fact the punishment imposed was to reduce the pay of the respondent workman at the minimum and he has submitted that the Industrial Tribunal would not have observed it to be a case of no harsh punishment had it been alive to the fact situation of the punishment modified by the first appellate authority to be the reduction at the minimum of the payscale.

I have considered the submissions made on behalf of both the sides and have gone through the impugned award and the other relevant papers which are available. So far as section 11-A is concerned, I find that section 11-A of the Industrial Disputes Act only deals with the cases of discharge or dismissal and on the plain reading of section 11-A of the Industrial Disputes Act the argument raised by Mr. Raval *prima facie* can't be said to be wholly devoid of force rather the argument on the face of it is attractive, but the law which has been laid down in this regard has been considered in detail in more than one decisions to the effect that section 11-A does not take away inherent powers of the Labour Court or the Industrial Tribunal to deal with the question of quantum of punishment even in cases where the punishment is short of discharge or dismissal. In the decision rendered by the Division Bench in GSRTC Vs. P.K.Acharya (Supra) it has been laid down that the Labour Court/Tribunal is conferred with the power under section 11-A to interfere in cases specifically of discharge or dismissal only. Where the employer has visited the workman with the penalty of discharge or dismissal from service, the Labour Court under this section is empowered to interfere with the order of punishment, if the same is not justified according to it. Labour Court/Tribunal in such cases may give appropriate relief including any lesser punishment in lieu of dismissal or discharge. It has been observed in para 16 that as the section does not refer to other kinds of punishment, which the management is entitled to award for certain acts of misconduct, it cannot be accepted that this section empowers and vests jurisdiction in the Labour Court or Tribunal to interfere with the order of punishment than the one imposed by the management. The Legislature must be aware of the restricted jurisdiction and the powers of the Labour Court or the Industrial Tribunal enunciated by various judgments of the Supreme Court, as discussed above, and even then did not vest the jurisdiction or empower the Labour Court or the Industrial Tribunal to interfere with or substitute other kinds of punishment than that of the discharge or dismissal. If at all the intention of the Legislature would have been to substitute other punishment, it would have specifically included them in section 11-A and would not have confined it to the punishment of discharge or dismissal. It also cannot be accepted that it

reflects the intention of the policy of the Legislature and therefore, the said principles should also be made applicable to other kinds of punishment short of discharge or dismissal. It also cannot be accepted that it reflects the intention of the policy of the Legislature and, therefore, the said principles should also be made applicable to other kinds of punishment. If at all that would have been the policy and the Legislature wanted to restrict the managerial power for other kinds of punishment, there was no reason for not making such provisions in Section 11-A or in any other provision of the Act. A reference has then been made to the Supreme Court decision in the case of the Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. Vs. The Management and Others, A.I.R.1973 SC 1127 and M/s. Indian Iron & Steel Co. Ltd Vs. Their Workmen A.I.R.1958 SC.130. It has been observed by the Division Bench that the conduct of the disciplinary proceeding and the punishment to be imposed were all considered to be the managerial function which the Tribunal has no power to interfere unless the findings were perverse or the punishment was so harsh as to lead to inference of victimization or unfair labour practice. This position is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by the employer established the misconduct alleged against the workman. What was originally plausible conclusion that could be drawn by an employer from the evidence, has now given place to the satisfaction being arrived at by the Tribunal that the finding of the misconduct is correct. The limitations imposed on the power of the Tribunal by the decision in Indian Iron & Steel Company Ltd., can no longer be invoked by the employer and the Tribunal is at liberty to consider not only whether the finding of misconduct recorded by the employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter. It has been then observed by Their Lordships that even after the incorporation of Section 11-A, that legal position has remained unchanged. The power to interfere with the punishment and alter the same is conferred by section 11-A on the Tribunal. These observations by the Supreme Court are an answer to the arguments advanced by the learned Advocate for the management. Managerial rights are now restricted to that extent under section 11-A and the jurisdiction of the Labour Court is widened to that extent so far as the finding of misconduct and the punishment of discharge and dismissal are concerned. The law on the point for other kinds of punishment except the punishment of discharge or dismissal remains unaffected by the provisions of section 11-A of the Industrial Disputes Act. The Division Bench of this Court in the case of GSRTC Vs. P.K. Acharya

(Supra) has enumerated six circumstances at page 385 of the aforesaid report in which the Tribunal can interfere with the finding of the management. Ofcourse these six circumstances enumerated are only illustrative and not exhaustive and the Tribunal can interfere with the finding or the punishment in circumstances alike also but the only caution is that the Tribunal cannot interfere with the finding or nature and quantum of punishment casually or as if exercising appellate jurisdiction. The Division Bench in the aforesaid case of GSRTC Vs. P.K.Acharya (Supra) then proceeded to examine the facts of each case confining to the final order of punishment. In para 29 dealing with the case of misconduct not involving dishonesty and the punishment for attending the duty one hour late the Division Bench found that the punishment of reduction of pay at the initial stage and in view of the 12 years service rendered was found to be excessive, harsh and punitive leading to the inference of victimization of the workman and the Tribunal was held to be justified in interfering with the order of punishment. The High Court found that initially the petitioner in that case had been dismissed from service and in appeal the authority altered the punishment and directed to reinstate the respondent in service with effect from September 14, 1985, reduced the pay of the respondent to the initial payscale and it is this punishment of reduction of the pay at initial payscale which was found to be excessive by the Tribunal and the order of the Tribunal was upheld by this Court. In the other case reported in 1992 (1) GLR Pg.432, Municipal Commissioner, Baroda Vs. Sanatkumar D. Brahmbhatt on which the reliance has been placed by Mr.Clerk it has been held in principle that section 11-A would normally come into play when there is order of discharge or dismissal. However, once the dispute is referred to the Tribunal, the Tribunal would have jurisdiction to decide whether the penalty is unduly severe, and it can set right the matter. In this Division Bench's decision the Court held that the contention raised on behalf of the Municipal Commissioner, Baroda was right to the extent that on the express language of Section 11A of the Act, such controversy could not be covered by the said provision because this provision relates to only discharge or dismissal of a workman. But the very dispute which is referred to the Industrial Tribunal for adjudication centres round the legality and propriety of the imposition of the punishment of stoppage of three yearly increments with future effect. The Industrial Tribunal in exercise of its power under section 11A was bound to adjudicate upon that dispute and pronounce upon the same and when there is a dispute or difference between employer and employee in connection with the punishment imposed on the workman, de hors section 11A, the legality and propriety of the punishment has to be examined by the Industrial Tribunal in the adjudicatory process of such dispute notwithstanding the fact that the

punishment was short of discharge or dismissal. Thus the ratio of the aforesaid case, based on several decisions of this Court and the Supreme Court as has been laid down in the aforesaid two Division Bench's decisions of this Court, is very clear, that, when the punishment itself is short of discharge or dismissal and the reference is made to the Tribunal and the dispute relates to the question as to whether the punishment as imposed is justified or not, depending upon the facts and circumstances of each case the Tribunal may adjudicate as to whether the punishment is excessive or disproportionate or shocking to the conscience notwithstanding the punishment being short of discharge or dismissal. I accordingly hold that in appropriate cases it is always open for the Tribunal to go into the question of quantum of punishment even if the order of punishment is short of discharge or dismissal and merely because section 11A mentions discharge and dismissal only, it cannot laid down as a principle of universal application that in no case when the punishment is short of discharge or dismissal the Tribunal cannot interfere with the question of quantum of punishment. In the given case I find that the defence which was taken by the workman against the allegation which he was facing was not only probable but plausible inasmuch as he had only allowed, in a casual contract bus conducted by him, the boarding of seven passengers of the same marriage party who were travelling in a separate car which broke down and therefore those 7 passengers were accommodated in the bus without charging any fare by the concerned workman. However the amount had also been charged later on from those 7 passengers by the corporation and thus the corporation also did not suffer any financial loss. At that particular time while accommodating 7 passengers of the same marriage party the respondents had only shown the normal courtesy and in lieu thereof he did not gain anything for himself. In this view of the matter, I am not impressed with the arguments which have been raised against the respondent workman by the corporation that about 38 defaults had been recorded against the respondent previous to this incident. Even otherwise the respondent had not noticed that the previous defaults are going to be considered against him for the purpose of inflicting the punishment in the present case. Although in a given case the past record may be relevant so as to determine the quantum of punishment but even while doing so due notice of the previous record into consideration has to be given to the concerned workman as has been laid down in AIR 1964 S.C.Pg.506 in case of the State of Mysore Vs. K.Manche Gowda. So far as about fifteen defaults to which the reference has been made for the first time before this Court by the learned counsel for the corporation I need not dilate further as these items were never there during the course of trial of the reference before the Industrial Tribunal.

Now the only question remains is that in para 11 of the impugned award the Industrial Tribunal has observed that the punishment awarded does not appear to be harsh. This observation lends support to the contention of the learned counsel for the petitioner that once the Tribunal itself had observed that the punishment awarded was not harsh there was no justification to reduce the punishment further. But as I find that it is duly explained that the Tribunal while making these observations had in mind that the punishment which has been imposed by the appellate authority was of withholding two increments permanently having regard to the previous 38 defaults. The observation that the punishment awarded does not appear to be harsh was therefore obviously erroneous inasmuch as the punishment imposed by the authority was the reduction of pay at the initial stage when the respondent workman was serving with the corporation since 7.5.1972 and the reduction of the pay at the initial stage of the payscale would mean loss of about six annual increments to the respondent workman and had this been noticed as per the record by the Industrial Tribunal it may not have observed that the punishment was not harsh. It is unfortunate that even while reviewing the order correction was made in the operative part so as to read the punishment imposed by the corporation as reduction of pay at the initial stage instead of withholding two increments and to punish the respondent with withholding of one increment, care was not taken to recast the observations made in para 11 that the punishment does not appear to be harsh. I, therefore, find that this observation that the punishment was not harsh was made by the Industrial Tribunal under the misconception that the punishment imposed by the appellate authority was that of withholding of two permanent increments only. Whereas in fact, punishment was reduction of pay at the initial stage of the payscale and on that basis the punishment was reduced to withholding of one increment. Certainly punishment of withholding two increments permanently could not be said to be harsh but the punishment of reducing the pay at the initial stage of payscale after six years of the service would certainly be harsh more particularly in the facts of the present case where it is found that the defence raised by the respondent was found to be plausible and it can at the most be taken to be a case of mistake and not of misconduct. Difference has to be made in a case of mistake as against misconduct. A mistake is pardonable but the misconduct is not. I, therefore, hold that since the Industrial Tribunal proceeded on the basis that the punishment imposed upon the petitioner was withholding of two increments permanently which was not harsh according to the Tribunal itself, let the respondent-workman suffer the punishment of withholding of two increments permanently instead of one increment which has been reduced to withholding

of one increment by the Industrial Tribunal under an erroneous assumption.

Accordingly this Special Civil Application is partly allowed and the award of the Industrial Tribunal shall stand modified so as to make the respondent workman suffer the punishment of withholding of two increments with permanent effect and as ordered by the Industrial Tribunal this order shall take effect from the date of the reference i.e. 23.10.1985. In all other aspects the impugned award of the Industrial Tribunal is sustained and it is expected that the Gujarat State Road Transport Corporation shall pay difference on account of the modified award to be paid to the respondent workman within a period of one month from the date the certified copy of the order is served. Rule is made absolute accordingly. No order as to costs. Interim order shall cease to be operative as the main matter itself has been decided. Direct Service is permitted.

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